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IN THE

Supreme Court of the United States

October Term, 1968

No. 409

LOS ANGELES HERALD EXAMINER, a Division of The Hearst Corporation, and THE SAN FRANCISCO EXAMINER, a Division of The Hearst Corporation,

Petitioners,

vs.

SAN FRANCISCO-OAKLAND NEWSPAPER GUILD; NEWSPAPER AND PERIODICAL DRIVERS' AND HELPERS' UNION LOCAL 921; LOS ANGELES NEWSPAPER GUILD, LOCAL 69; LOS ANGELES WEB PRESSMEN'S UNION NO. 18; LOS ANGELES STEREOTYPERS' UNION NO. 58; LOS ANGELES TYPOGRAPHICAL UNION NO. 174; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE NO. 94; GENERAL WAREHOUSEMEN'S UNION LOCAL 598; BUILDING SERVICE AND MAINTENANCE EMPLOYEES UNION NO. 399; LOS ANGELES MAILERS' UNION NO. 9; and LOS ANGELES PAPER HANDLERS' UNION NO. 3, appellants in proceedings before the United States Court of Appeals for the Ninth Circuit,

Respondents,

RALPH E. KENNEDY, Regional Director of Region 21 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, appellee in proceedings before the United States Court of Appeals for the Ninth Circuit,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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RALPH E. KENNEDY, Regional Director of Region 21 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, appellee in proceedings before the United States Court of Appeals for the Ninth Circuit,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioners, the Los Angeles Herald Examiner, Division of The Hearst Corporation, and the San Francisco Examiner, Division of The Hearst Corporation, pray that a writ of certiorari issue to review a final order of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on May 20, 1968, denying petitioners leave to intervene in appeal proceedings to review a temporary injunction issued by the United States District Court for the

Northern District of California under Section 10(1) of the National Labor Relations Act, as amended, 29 U.S.C. §160(1).

OPINIONS BELOW.

The Court of Appeals' order of May 20, 1968 denying petitioners leave to intervene, rescinded a previous order of April 19, 1968 which had granted leave to intervene. Neither of these orders was accompanied by an opinion of the court. The orders are printed in Appendix A hereto.

The order, supplemental order, and findings of fact and conclusions of law issued by the District Court in connection with the temporary injunction have not been published and are printed in Appendix B hereto.

JURISDICTION.

The order of the Court of Appeals denying the petitioners leave to intervene was entered on May 20, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).*

QUESTION PRESENTED.

Where a district court, in proceedings instituted by the National Labor Relations Board pursuant to §10 of the National Labor Relations Act, as amended, issues a temporary injunction against a charged party, and the charged party appeals therefrom, may the charging party be denied the right to intervene in the appeal proceedings wherein the propriety of protecting his rights and interests by injunctive relief will be determined?

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*In *Local 283, UAW v. Scofield*, 382 U.S. 205, 208-09 (1965), the Court held that a charging party denied intervention in court of appeals proceedings to review a Board decision was a "party" to the case within the meaning of §1254(1).

STATUTE INVOLVED.

Section 10(1) of the National Labor Relations Act, as amended, 29 U.S.C. §160(1), provides in relevant part:

> "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(A), (B), or (C) of section 158(b) of this title . . . the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any United States district court within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. . . . Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony. . . ."

STATEMENT OF THE CASE.

This case originated from charges filed with the Board by petitioners herein, alleging that the respondent unions had engaged in and were engaging in unfair labor practices within the meaning of §8(b)(4)(i)(ii)(B) of the Act, 29 U.S.C. §158(b)(4)(i)(ii)(B), which proscribes secondary boycotts by unions. After conducting a preliminary investigation, as required by §10(1) of the Act, Respondent Ralph E. Kennedy, Regional Director of the Board, concluded that there was reasonable cause to believe that respondent unions were engaging in unfair labor practices, as charged, and that an unfair labor practice complaint should issue. Thereupon, pursuant to §10(1), Kennedy filed a petition in the District Court, seeking a temporary injunction interlocutory to the final adjudication of the matter by the Board. A hearing on an order to show cause was held, during which the charging parties, petitioners herein, were allowed to participate as provided by §10(1). After presentation of evidence, the District Court issued an order and supplemental order, accompanied by findings of fact and conclusions of law, granting the temporary injunction. Respondent unions appealed to the Court of Appeals and petitioners petitioned for leave to intervene in the appeal proceedings before that court.

By an order issued April 19, 1968, the Court of Appeals granted petitioners leave to intervene. Respondents thereafter filed with the Court of Appeals a motion to reconsider the order allowing intervention, and in response thereto the Court of Appeals issued a second order on May 20, 1968, rescinding its prior order but

providing that petitioners might appear and file a brief as *amici curiae.*

Petitioners applied to the Court of Appeals for an order staying further proceedings in that court pending final determination by this Court of the within petition for certiorari, but the Court of Appeals denied said application by an order dated July 16, 1968.

REASONS FOR GRANTING THE WRIT.

1. The order of the Court of Appeals denying petitioners leave to intervene in the review proceedings before that court is directly in conflict with the controlling decision of this Court in *Local 283, UAW v. Scofield*, 382 U.S. 205 (1965).

In *Scofield,* this Court reviewed two cases in which courts of appeals had issued orders denying petitions for intervention and relegating the would-be intervenors to the status of *amici curiae.* In the first of these cases (*Scofield*), the petitioner, who had been the successful charged party in proceedings before the Board, sought to intervene in review proceedings instituted by the unsuccessful charging party pursuant to §10(f) of the Act. In the second case (*Fafnir*), the petitioner, who had been the successful charging party in proceedings before the Board, sought to intervene in review and enforcement proceedings which were instituted at the petition of the unsuccessful charged party and the cross-petition of the Board. In each case, the Court upheld the right of the successful party to intervene.

> "We hold that both the successful charged party (in *Scofield*) and the successful charging party (in *Fafnir*) have a *right to intervene* in the

> Court of Appeals proceeding which reviews or enforces Labor Board orders. We think that Congress intended to confer intervention rights upon the successful party to the Labor Board proceedings in the court in which the unsuccessful party challenges the Board's decision." (382 U.S. at 208). [Emphasis added].

In *Scofield* and *Fafnir,* the Board argued, as it does in this case, that the relevant provisions of §10 were intended to protect the "public interest" to the exclusion of the "private interests" of the charging party, and that the charging party was intended to be only an incidental beneficiary of any relief obtained by the Board.* Mr. Chief Justice Warren, for a unanimous Court, rejected this argument:

> "In prior decisions, this Court has observed that the Labor Act recognizes the existence of private rights within the statutory scheme. . . . To emphasize the rhetoric of 'public interest' . . . is not to imply that the public right excludes recognition of parochial private interests." (382 U.S. at 218).
>
> ". . .
>
> "In short, we think that the statutory pattern of the Labor Act does not dichotomize 'public' as opposed to 'private' interests. Rather, the two interblend in the intricate statutory scheme." (382 U.S. at 220).

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*In the proceedings below, Respondent Kennedy invoked this argument as follows: "Section 10(1) of the Act was not intended to establish a remedy for the benefit of a private party, and the incidental benefit which might inure to the charging party from an injunction under the section is not a sufficient basis for permitting charging parties to intervene in the special statutory proceedings contemplated by Section 10(1)." (Answer of appellee Kennedy, before Court of Appeals to Motion by Charging Parties for Leave to Intervene, p. 3).

Here, as in *Scofield* and *Fafnir,* the attempt to deny petitioners' rights of intervention by invoking the "public right" dogma must fail. For, although §10(1) does not address itself directly to the question of whether intervention is allowed in proceedings to review a temporary injunction, the intricate blending of private and public rights in the statutory scheme clearly manifests a congressional intention favoring intervention. The omission of Congress to provide expressly for intervention in an appeal from a §10(1) proceeding cannot be read as an expression of intention to deny charging parties in this case their due process rights to participate actively in litigation involving their statutory rights. This issue was laid to rest in *Scofield* and *Fafnir* when the Court held that Congress's omission to provide expressly for intervention as of right in §10(e) and §10(f) review proceedings did not indicate an intent to bar intervention. (382 U.S. at 209-10).

Congress recognized the irreparable injury which could be caused to an employer by secondary boycott activity, and it was for this reason that §10(l) makes it mandatory for the Board to petition for injunctive relief whenever such illegal activity is alleged and the regional director has "reasonable cause to believe such charge is true." Having thus recognized the essential and immediate need for protecting the interests of the threatened employers in such circumstances, Congress could not simultaneously have intended to prevent full participation in the litigation by the employer. Indeed, the contrary is shown by the language of §10(1) itself, which provides, in relevant part:

> "Upon filing of any such petition the courts shall cause notice thereof to be served upon any

person involved in the charge and such person, *including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony* . . . ." [Emphasis added].

Since this language authorizes the charging party to appear and introduce contentious evidence (*Retail Clerks Union v. Food Employers Council, Inc.*, 351 F.2d 525, 528 (9th Cir. 1965)), the legislative mandate clearly makes the charging party more than an *amicus*, for an *amicus* would have no absolute right to be heard and to introduce and dispute contentious evidence. Were a charging party relegated to the role of an *amicus* in the appeal proceedings, he would be denied the opportunity for active participation in the litigation which Congress intended should be secured to him as a matter of right.

Relegation of a charging party to the status of *amicus* in appeal proceedings would thus be wholly inconsistent with the recognition of private rights which pervades the scheme of the Act. This is made plainly evident by *Fafnir's* rejection of the argument that the would-be intervenor can adequately protect his interests by participating in appeal proceedings as *amicus curiae*. As stated by the Court, in language equally applicable here:

> "The rights typically secured to an intervenor in a reviewing court—to participate in designating the record, to participate in prehearing conferences preparatory to simplification of the issues, to file a brief, to engage in oral argument, to petition for rehearing in the appellate court or to this Court for certiorari—are not productive of delay nor do they cause complications in the appellate courts. . . .

> Participation in defining the issues before the court guarantees that all relevant material is brought to its attention, and makes the briefs on the merits more meaningful. . . . On the other hand, an *amicus*—with the exception of the right to file a brief—might be unable adequately to present all the relevant data to the court." (382 U.S. at 215-16).

As noted by the Court, intervention secures for the petitioner, not only the right to participate in the appeal proceedings, but also the right to seek review by writ of certiorari from an adverse decision on the merits in the court of appeals. The need to secure by intervention this right to petition for review is vitally important to the successful charging party, for the Board might decline to petition for review from an adverse decision for reasons wholly unrelated to the merits of the controversy.

> "The Labor Board may . . . adversely affect the rights of the private parties. . . . For example, the Board may decide a case and later re-evaluate its position at a time when that case is before an appellate court. The General Counsel, in such a situation, cannot be expected wholeheartedly to attempt to convince an appellate court of the correctness of a doctrine which the Board itself has abandoned." (382 U.S. at 214-15 n.7).

Intervention additionally "serves the 'public interest' by guaranteeing that the Board's interpretation of the relevant provisions accords with the intent of Congress." (382 U.S. at 219).

Finally, as stressed by the Court in *Fafnir,* the right of intervention by a successful charging party is

supported by the policies underlying intervention generally:

> "[H]elpful analogies may be found in the Judicial Review Act of 1950, governing intervention in the Courts of Appeals by private parties directly affected by agency orders, and in the Federal Rules of Civil Procedure." (382 U.S. at 216-17).
>
> "The Federal Rules of Civil Procedure, of course, apply only in the federal district courts. Still, the policies underlying intervention may be applicable in appellate courts. Under Rule 24(a)(2) or Rule 24(b)(2), we think the charged party would be entitled to intervene." (382 U.S. at 217 n.10).

This was the comment of the Court prior to the 1966 amendment of Rule 24. As now amended to expand the right of intervention, Rule 24(a)(2)* offers an even more compelling analogy in support of petitioners' right to intervene.

Respondents have attempted to distinguish *Scofield* and *Fafnir* by arguing that intervention in appeal proceedings to review a §10(1) injunction is prohibited by the Norris-LaGuardia Act, which limits the jurisdiction of federal courts to grant injunctive relief in labor disputes. This argument wholly fails to take account of §10 (h) of the Act, which excepts from the Norris-La-

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*Rule 24(a)(2), as amended, reads, in material part:

> *"Intervention of Right:* Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

Guardia Act *all* federal court proceedings authorized under §10 of the National Labor Relations Act, including not only §10(e) and §10(f) review and enforcement proceedings of the type involved in *Scofield* and *Fafnir,* but also §10(1) injunction proceedings of the type here involved. Section 10(h) provides:

> *"When granting appropriate temporary relief* or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, *as provided in this section [10], the jurisdiction of courts sitting in equity shall not be limited by sections 101-115 of this title."* (29 U.S.C. §160(h)). [Emphasis added].

Ignoring the fact that the exemption provided in §10(h) is applicable to all §10 proceedings, respondents argue that the asserted potential conflict between the Norris-LaGuardia Act and intervention was not involved in *Scofield* and *Fafnir,* where the Court sanctioned intervention in a §10(e) enforcement proceeding. But, in a §10(e) proceeding, a court of appeals decree enforcing a Board cease-and-desist order is an injunctive decree. A cease-and-desist order is not self enforcing. When the Board, as in the *Fafnir* case, issues an order and petitions the court of appeals for enforcement, it seeks injunctive relief—just as it seeks injunctive relief when it petitions a district court pursuant to §10(l). Indeed, the only difference is that the scope of injunctive relief in a §10(e) proceeding is permanent, while being temporary in a §10(1) proceeding. Intervention in an appeal from a §10(1) proceeding involves far less potential conflict with the Norris-LaGuardia Act than the intervention in a §10(e) pro-

ceeding which this Court unequivocally sanctioned in *Scofield* and *Fafnir*.

Thus, *Scofield* and *Fafnir* cannot be distinguished on the grounds that intervention in the §10(e) proceeding there involved did not entail the potential conflict with the Norris-LaGuardia Act which is asserted to bar intervention in this case. Intervention in *Scofield* and *Fafnir* did not conflict with the Norris-LaGuardia Act for the same reasons that intervention in this case does not. Section 10(h), which expressly exempts *all* §10 proceedings from the limitations of the Norris-LaGuardia Act, uniformly applies to a §10(1) proceeding as well as to a §10(e) review proceeding.

Respondents have also argued that the legislative history of §10(1) demonstrates a congressional intent not to allow intervention. This view represents an illogical extension of what was a stated congressional objective—to allow only the Board to *initiate* injunction proceedings. While it is true that Congress did not intend that a charging party have the right to initiate §10(1) proceedings, it is clearly a *non sequitur* to assume from this premise that once a proceedings is instituted by the Board the charging party should be denied intervention. To deny a private party the power to institute a proceeding is manifestly not tantamount to denying him the right to intervene once the Board in its discretion has begun proceedings. Under §10(e), only the Board had statutory authority to file the enforcement petition involved in *Fafnir*. Had the Board not sought enforcement of its order, the successful charging party could not have instituted enforcement proceedings in the court of appeals. But once the Board exercised its discretion to seek enforce-

ment in *Fafnir,* the successful charging party then had a right to intervene—as do petitioners in this case.

In a word, there is "nothing inconsistent in denying the right of a private party to institute" an injunction proceeding "and, on the other hand, in permitting intervention in a proceeding already in the court for decision." (*Local 283, UAW v. Scofield,* 382 U.S. at 221.) Such participation after proceedings have begun in no way impairs the congressional policy of according to the Board exclusive authority to initiate an injunction proceeding.

2. The order of the court below is in conflict with the order of the Court of Appeals for the Second Circuit in *McLeod v. General Elec. Co.,* 366 F.2d 847 (2d Cir., 1966). In *McLeod,* the Board obtained a §10(j) injunction in the district court. The union had been the charging party and participated in the district court proceeding through examination and cross-examination of witnesses, as well as in the making of legal submissions. Although the union was not considered a "party" in the district court proceedings, it was allowed to intervene formally in the appeal proceedings before the Second Circuit.* The contrary

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*Respondents have attempted to discount the significance of *McLeod v. General Electric Co.,* arguing that the matter was not litigated and that, in any event leave to intervene was allowed only as a "nominal party." But the court's order did not refer to the intervenor as a "nominal" party. And while it is not clear whether the matter was litigated, the holding of the Second Circuit clearly gave the charging party "party" status with the right to seek review in this Court. This right was exercised when the union joined with the Board to petition for certiorari. (385 U.S. 533).

Furthermore, it is interesting that the Board through respondent Kennedy attempts to avoid the conflict with *McLeod v. General Electric Co.,* by arguing that there the Board through its regional director McLeod choose not to object to the charging party intervening and appearing as a party and filing a petition for certiorari. One wonders why the Board did not object in that case (if that is the fact) and objects so strenuously in the instant case.

result was reached in the present case after the charging parties had participated in the district court proceedings. Both the order allowing intervention by the Second Circuit and the order denying intervention in the present case were issued without opinion.*

3. The question presented involves an important issue in the administration of the Act. The number of §10(1) injunction proceedings filed in district courts has risen from 44 in fiscal year 1953 to 227 in fiscal year 1965.** In addition, the resolution of the question of the right of a charging party to intervene in the appeal of the issuance of a §10(1) injunction will undoubtedly dispose of the question of the right of a charging party to intervene in the appeal of the issuance of a §10(j) injunction. The number of §10(j) injunction proceedings filed in district courts is also on the rise. There was one such proceeding in fiscal year 1953 and 18 in fiscal year 1965.*** The question presented is therefore not episodic, but is likely to arise with increasing frequency in the courts of appeals and therefore it is in the public interest to resolve it now.

Moreover, the right of a charging employer to intervene in appeal proceedings to review a §10(1) injunction presents a particularly important federal question

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*In *N.L.R.B. v. Nashville Building & Construction Trades Council*, 383 F.2d 562 (6th Cir. 1967), the court had before it both a §10(l) injunction proceeding and an enforcement proceeding under §10(e). Intervention by the successful charging party in the enforcement proceeding was allowed, but the court did not speak to the issue of whether intervention in a §10(1) proceeding was proper. 383 F.2d at 563 n. 1.

**Eighteenth Annual Report of the National Labor Relations Board at 114-17 (1954); Thirtieth Annual Report of the National Labor Relations Board at 214 (1966).

***Ibid.

which should be settled by this Court. Section 10(1) provides that when a complaint alleges an illegal secondary boycott, the Board *must* petition for injunctive relief if the regional director has "reasonable cause to believe such charge is true." This mandatory nature of §10(1) reflects congressional recognition of the need to accord employers immediate injunctive relief from the irreparable injury that results from secondary boycotts:

> "Section 10(1) reflects a congressional determination that the unfair labor practices enumerated therein are so disruptive of labor management relations and threaten such danger of harm to the public that they should be enjoined *whenever a district court has been shown* reasonable cause to believe in their existence and finds that the threatened harm or disruption can best be avoided through an injunction. [citations omitted]. It is not for the Regional Director to substitute his own ideas of how best to deal with alleged unfair labor practices for those of the Congress." (*Retail Clerks Union v. Food Employers Council, Inc.*, 351 F.2d 525, 531 (9th Cir. 1965)).

Congress's firm purpose in enacting §10(1) was to protect employers from the necessity of waiting for a final Board adjudication in cases involving such business-crippling practices as secondary boycotts. In the average case where enforcement of the Board's action is resisted, nearly seventeen months elapse from the date of the violation to the date of the enforcement order.* To deny the initially successful charging em-

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*Subcommittee on Administrative Practice and Procedure, Sen.Comm. on the Judiciary, 86th Cong., 2d Sess., Report on Regulatory Agencies to the President-Elect 64 (1964).

ployer the right to intervene in appeal proceedings in order to protect his interest in continuing such injunctive relief would be egregiously contrary to this congressional purpose.

Petitioners believe that the reasoning and the holding of *Scofield* and *Fafnir* are controlling in this case. However, whatever view is taken on this substantive issue, the question of the application of *Scofield* and *Fafnir* to §10 injunction proceedings should be resolved by this Court. A court of appeals will have to face the issue of intervention by the successful charging party each time review is sought by the unsuccessful charged party in a §10(1) or §10(j) injunctive proceeding. We respectfully submit that a resolution of the charging party's rights is in the public interest and essential to the proper and smooth functioning of federal labor relations law.

CONCLUSION.

For the foregoing reasons, it is urged that this petition for writ of certiorari should be granted.

Respectfully submitted,

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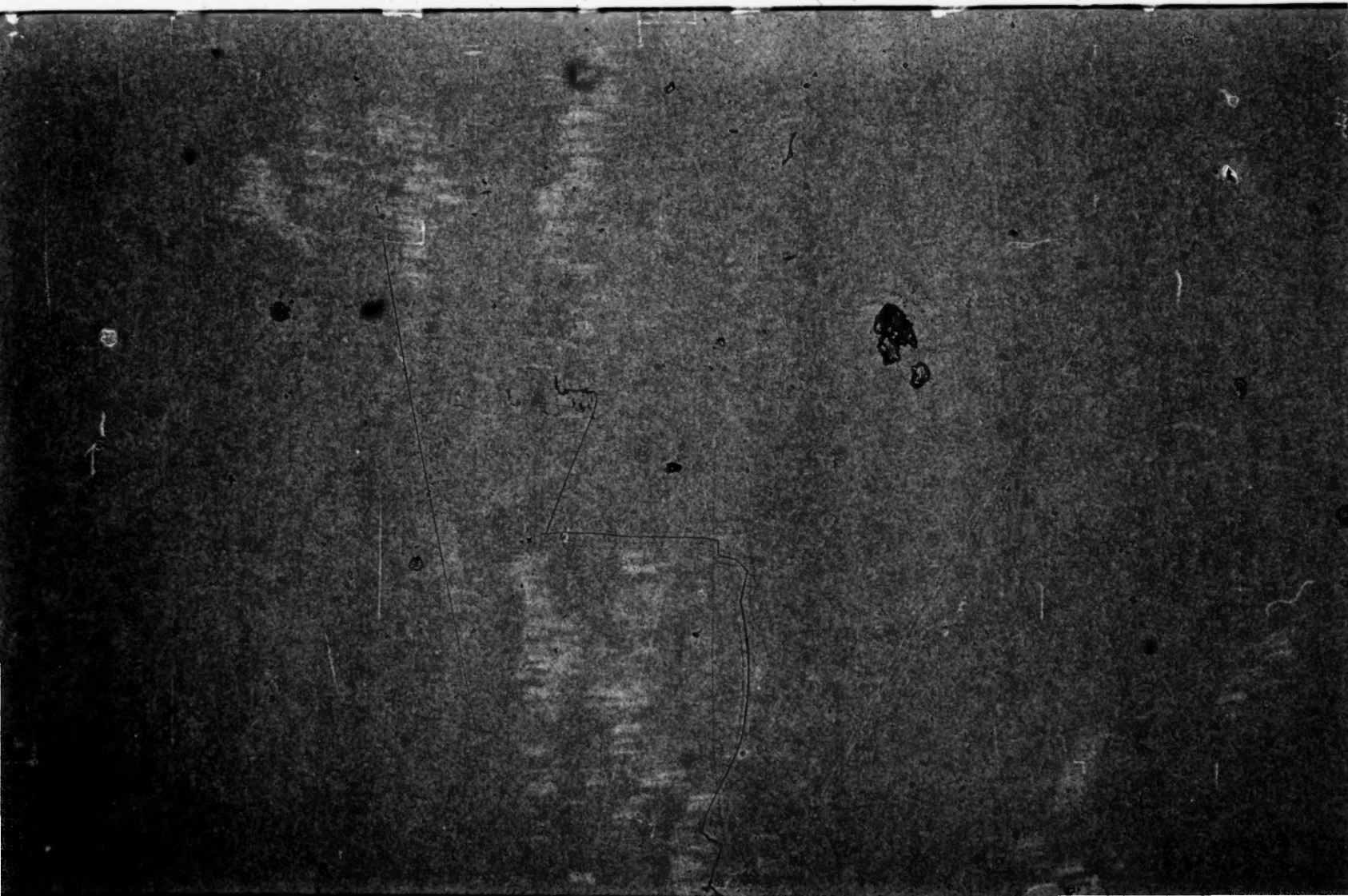
AUGUST, 1968



APPENDIX A.

Order.

United States Court of Appeals, for the Ninth Circuit.

San Francisco-Oakland Newspaper Guild; Newspaper and Periodical Drivers' and Helpers' Union Local 921; Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Stereotypers' Union No. 58; Los Angeles Typographical Union No. 174; International Association of Machinists and Aerospace Workers, District Lodge No. 94; General Warehousemen's Union Local 598; Building Service and Maintenance Employees Union No. 399; Los Angeles Mailers' Union No. 9; and Los Angeles Paper Handlers' Union No. 3, Appellants, vs. Ralph E. Kennedy, Regional Director of Region 21 of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, Appellee. Nos. 22767-8-9.

Filed: May 20, 1968.

Before: KOELSCH, BROWNING and DUNIWAY, Circuit Judges

The Regional Director and charged parties, having moved for reconsideration of our order allowing the charging parties to intervene in this proceeding, the latter were permitted to and did file a brief in opposition and the matter was then submitted.

IT IS ORDERED that the order of April 19, 1968, so far as it permitted such intervention, is rescinded but is deemed an authorization for charging parties to appear and file a brief as amici curiae.

/s/ M. OLIVER KOELSCH
/s/ JAMES R. BROWNING
/s/ BEN C. DUNIWAY
United States Circuit Judges

Order on Motions.

United States Court of Appeals, for the Ninth Circuit.

San Francisco-Oakland Newspaper Guild; Newspaper and Periodical Drivers' and Helpers' Union Local 921; Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Stereotypers' Union No. 58; Los Angeles Typographical Union No. 174; International Association of Machinists and Aerospace Workers, District Lodge No. 94; General Warehousemen's Union Local 598; Building Service and Maintenance Employees' Union No. 399; Los Angeles Mailers' Union No. 9; and Los Angeles Paper Handlers' Union No. 3, Appellants, vs. Ralph E. Kennedy, Regional Director of Region 21 of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, Appellee. Nos. 22767-8-9.

Filed: April 19, 1968.

Before: KOELSCH, BROWNING and DUNIWAY, Circuit Judges

Appellants, above named, have appealed from an order of the United States District Court, granting a temporary injunction on February 7, 1968, in an action brought by the Regional Director of Region 21 of the National Labor Relations Board under Section 10-(L) of the National Labor Relations Act, as amended (29 U.S.C. §160(L)).

Presently they have moved for an order suspending the injunction pending this appeal. By stipulation the parties agreed that the Regional Director should file a written response to said motion by April 17 and that

the matter would then be submitted for the court's determination without argument; additionally, the parties agreed upon a briefing schedule and requested an early hearing of the appeal on the merits.

The charging parties in the Labor Board proceedings (Case Nos. 21-CC-1043 and 21-CC-1043-2) on April 17, filed their motion seeking leave to intervene in this appeal and time to file their opposition to appellants' motion.

The court, after due consideration, makes the following order:

1. The charging parties are granted leave to intervene in this appeal as appellees; their motion for time, etc. is denied;

2. Appellants' motion for stay of the temporary injunction is denied;

3. The briefing schedule is as follows:

Appellants shall file and serve their briefs by April 23; appellees may have seven days after receipt of such briefs to file their briefs, and appellants' reply briefs to follow within five days thereafter.

/s/ M. OLIVER KOELSCH
/s/ JAMES R. BROWNING
/s/ BEN C. DUNIWAY
United States Circuit Judges

APPENDIX B.

Order Granting Temporary Injunction.

United States District Court, Northern District of California.

Ralph E. Kennedy, Regional Director of Region 21 of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, Petitioner, v. San Francisco-Oakland Newspaper Guild; Newspaper and Periodical Drivers' and Helpers' Union Local 921; Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Stereotypers' Union No. 58; Los Angeles Typographical Union No. 174; International Association of Machinists and Aerospace Workers, District Lodge No. 94; General Warehousemen's Union Local 598; Building Service and Maintenance Employees Union No. 399; Los Angeles Mailers' Union No. 9; and Los Angeles Paper Handlers' Union No. 3, Respondents. Civil No. 48511.

This cause came on to be heard upon the verified petition of Ralph E. Kennedy, Regional Director of Region 21 of the National Labor Relations Board, for and on behalf of the Board, for a temporary injunction pursuant to Section 10(1) of the National Labor Relations Act, as amended (29 U.S.C. Sec. 160(1)), pending the final disposition of the matters involved pending before said Board, and upon the issuance of an order to show cause why injunctive relief should not be granted as prayed in said petition. The Court, upon consideration of the pleadings, affidavits and other evidence, briefs, arguments of counsel, and the entire record in the case, has made and filed its Findings of

Fact and Conclusions of Law, finding and concluding that there is reasonable cause to believe that respondents have engaged in, and are engaging in, acts and conduct in violation of 29 U.S.C. Sec. 158(b)(4)(i)(ii)(B), affecting commerce within the meaning of 29 U.S.C. Sec. 152(6) and (7), and that such acts and conduct will likely be repeated or continued unless enjoined.

Now, therefore, upon the entire record, it is

ORDERED, ADJUDGED AND DECREED that, pending the final disposition of the matters involved pending before the National Labor Relations Board, respondents Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Stereotypers' Union No. 58; Los Angeles Typographical Union No. 174; International Association of Machinists and Aerospace Workers, District Lodge No. 94; General Warehousemen's Union Local 598; Building Service and Maintenance Employees Union No. 399; Los Angeles Mailers' Union No. 9; and Los Angeles Paper Handlers' Union No. 3, and each of them, their officers, representatives, agents, servants, employees, attorneys, and all members, persons and labor organizations acting in concert or participation with them, or any of them, be, and they hereby are, enjoined and restrained from:

Engaging in, sanctioning, supporting, promoting, or by picketing, handbilling, orders, instructions, requests or appeals, or by union disciplinary measures, or refusal to refer employees, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, inducing or encouraging any individual employed by the San Francisco Examiner (herein called Examiner), the Chronicle Publishing Company

(herein called Chronicle), the San Francisco Newspaper Printing Company, Inc. (herein called Printing Company), the Hearst Baltimore News American Division, the Hearst Boston Record American-Advertiser Division, the Hearst Capital Newspapers Division, the Hearst San Antonio Light Division, the Hearst Seattle Post-Intelligencer Division, or employed by any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services, or in any such or similar manner threatening, coercing or restraining the Printing Company, or the said newspapers, or any of them, or any other person, where in either case an object thereof is: (1) to force or require the Printing Company, or the said newspapers, or any of them, to cease doing business with their customers or suppliers; or (2) to force or require the customers or suppliers of the Printing Company, or the said newspapers, or any of them, to cease doing business with the Printing Company, or the said newspapers, or any of them.

Done at San Francisco, California, this 7th day of February, 1968, at 4:50 p.m.

/s/ Alfonso J. Zirpoli
United States District Judge

Supplemental Order Granting Temporary Injunction.

United States District Court, Northern District of California.

Ralph E. Kennedy, Regional Director of Region 21 of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, Petitioner, v. San Francisco-Oakland Newspaper Guild; Newspaper and Periodical Drivers' and Helpers' Union Local 921; Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Stereotypers' Union No. 58; Los Angeles Typographical Union No. 174; International Association of Machinists and Aerospace Workers, District Lodge No. 94; General Warehousemen's Union Local 598; Building Service and Maintenance Employees Union No. 399; Los Angeles Mailers' Union No. 9; and Los Angeles Paper Handlers' Union No. 3, Respondents. Civil No. 48511.

This cause came on to be heard upon the verified petition of Ralph E. Kennedy, Regional Director of Region 21 of the National Labor Relations Board, for and on behalf of the Board, for a temporary injunction pursuant to Section 10(1) of the National Labor Relations Act, as amended (29 U.S.C. Sec. 160(1)), pending the final disposition of the matters involved pending before said Board, and upon the issuance of an order to show cause why injunctive relief should not be granted as prayed in said petition. The Court, upon consideration of the pleadings, affidavits and other evidence, briefs, arguments of counsel, and the entire record in the case, has made and filed its Findings of Fact and Conclusions of Law, finding and concluding that

there is reasonable cause to believe that respondents have engaged in, and are engaging in, acts and conduct in violation of 29 U.S.C. Sec. 158(b)(4)(i)(ii)(B), affecting commerce within the meaning of 29 U.S.C. Sec. 152(6) and (7), and that such acts and conduct will likely be repeated or continued unless enjoined.

Now, therefore, upon the entire record, it is

ORDERED, ADJUDGED AND DECREED that, pending the final disposition of the matters involved pending before the National Labor Relations Board, respondents San Francisco-Oakland Newspaper Guild and Newspaper and Periodical Drivers' and Helpers' Union Local 921, and each of them, their officers, representatives, agents, servants, employees, attorneys, and all members, persons and labor organizations acting in concert or participation with them, or any of them, be, and they hereby are, enjoined and restrained, in furtherance and support of a labor dispute between two respondents parties hereto and the Herald-Examiner, from:

Engaging in, sanctioning, supporting, promoting, or by picketing, handbilling, orders, instructions, requests or appeals, or by union disciplinary measures, or refusal to refer employees, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, inducing or encouraging any individual employed by the San Francisco Examiner (herein called Examiner), the Chronicle Publishing Company (herein called Chronicle), the San Francisco Newspaper Printing Company, Inc. (herein called Printing Company), the Hearst Baltimore News American Division, the Hearst Boston Record American-Advertiser Division, the Hearst Capital Newspaper Division, the Hearst San

Antonio Light Division, the Hearst Seattle Post-Intelligencer Division, or employed by any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services, or in any such or similar manner threatening, coercing or restraining the Printing Company, or the said newspapers, or any of them, or any other person, where in either case an object thereof is: (1) to force or require the Printing Company, or the said newspapers, or any of them, to cease doing business with their customers or suppliers; or (2) to force or require the customers or suppliers of the Printing Company, or the said newspapers, or any of them, to cease doing business with the Printing Company, or the said newspapers, or any of them; provided that nothing in this order shall prevent San Francisco-Oakland Newspaper Guild of Newspaper and Periodical Drivers' and Helpers' Union Local 921 from engaging in or lawfuly supporting any primary labor dispute between the Examiner, Chronicle or the Printing Company and any union representing any employees of said persons.

Done at San Francisco, California, this 8th day of February, 1968, at 9:45 a.m.

/s/ Alfonso J. Zirpoli
United States District Judge

Findings of Fact and Conclusions of Law.

United States District Court, Northern District of California.

Ralph E. Kennedy, Regional Director of Region 21 of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, Petitioner, v. San Francisco-Oakland Newspaper Guild; Newspaper and Periodical Drivers' and Helpers' Union Local 921; Los Angeles Newspaper Guild, Local 69; Los Angeles Web Pressmen's Union No. 18; Los Angeles Stereotypers' Union No. 58; Los Angeles Typographical Union No. 174; International Association of Machinists and Aerospace Workers, District Lodge No. 94; General Warehousemen's Union Local 598; Building Service and Maintenance Employees Union No. 399; Los Angeles Mailers' Union No. 9; and Los Angeles Paper Handlers' Union No. 3, Respondents. Civil No. 48511.

This cause came on to be heard upon the verified petition of Ralph E. Kennedy, Regional Director of Region 21 of the National Labor Relations Board (herein called the Board), for a temporary injunction pursuant to Section 10(1) of the National Labor Relations Act, as amended (herein called the Act), pending the final disposition of the matters involved herein pending before the Board, and upon the issuance of an order to show cause why injunctive relief should not be granted as prayed in the petition. Respondents filed answers to the said petition. A hearing on the issues raised by the petition and answers was duly held on February 7, 1968.

The Court, upon consideration of the pleadings, evidence, briefs, arguments of counsel, and the entire record in the case, makes the following:

Findings of Fact

1. Petitioner is the Regional Director of Region 21 of the Board, an agency of the United States, and filed this petition for and on behalf of the Board.

2. (a) On or about January 6, 1968, the San Francisco Examiner, Division of The Hearst Corporation (herein called Examiner), and the Los Angeles Herald-Examiner, Division of The Hearst Corporation (herein called Herald-Examiner), *inter alias,* filed with the Board a first amended charge to a charge originally filed with the Board on or about January 5, 1968, the said first amended charge alleging that respondents, other than the San Francisco-Oakland Newspaper Guild, have engaged in, and are engaging in, unfair labor practices within the meaning of 29 U.S.C. Sec. 158(b)-(4)(i)(ii)(B).

(b) On or about January 10, 1968, the Herald-Examiner and the Examiner filed with the Board a similar charge alleging that the San Francisco-Oakland Newspaper Guild has engaged in, and is engaging in, unfair labor practices within the meaning of 29 U.S.C. Sec. 158(b)(4)(i)(ii)(B).

3. The aforesaid charges and first amended charge were referred to petitioner as the Regional Director of Region 21 of the Board.

4. There is, and petitioner has, reasonable cause to believe that:

(a) Respondents, each an unincorporated association, are organizations in which employees participate and

which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work. Respondents maintain their principal offices either in Los Angeles County, California, or in San Francisco, California. At all times material herein, respondents, and each of them, have been engaged within this judicial district in transacting business and in promoting and protecting the interests of their employee members or employee members of constituent or affiliated labor organizations.

(b) The Hearst Corporation (herein called Hearst), a Delaware corporation with its principal office in New York, New York, is engaged in, among other things, the publishing of newspapers and magazines. Hearst maintains seven newspaper divisions: The Baltimore News American Division; The Boston Record American-Advertiser Division; Capital Newspapers Division; The Los Angeles Herald-Examiner Division; The San Antonio Light Division; The San Francisco Examiner Division; and The Seattle Post-Intelligencer Division.

(c) The Herald-Examiner publishes in Los Angeles, California, a daily and a Sunday newspaper in connection with which it subscribes to several interstate news services, has an annual gross volume of business in excess of $1,000,000 and annually purchases goods and materials valued in excess of $100,000 which are shipped to it from points and places located outside the State of California.

(d) The Examiner publishes in San Francisco, California, a daily newspaper, subscribes to several interstate news services, has an annual gross volume of

business in excess of $1,000,000 and annually purchases goods, services and materials valued in excess of $100,000 originating at points and places outside the State of California. The Examiner also, jointly with The Chronicle Publishing Company, publishes a Sunday newspaper.

(e) The Chronicle Publishing Company (herein called Chronicle), a Nevada corporation with offices in San Francisco, California, publishes in San Francisco, California, a daily newspaper known as The San Francisco Chronicle. In connection with its publication of the said newspaper, and jointly with the Examiner in the publication of a Sunday newspaper, Chronicle purchases and receives goods, services, materials and supplies originating outside the State of California valued at a substantial amount and subscribes to interstate news services.

(f) The San Francisco Newspaper Printing Company, Inc. (herein called Printing Company), a Nevada corporation with principal office and place of business in San Francisco, California, is engaged in the business of newspaper printing in connection with which it performs the mechanical, circulation, advertising, accounting, credit, and collection functions for both the Examiner and the Chronicle. In the course and conduct of its printing business, the Printing Company purchases and receives goods, materials and supplies originating outside the State of California valued at a substantial amount.

(g) The Herald-Examiner is, and at all times material herein has been, operated independently of the Examiner the Chronicle and the Printing Company; is and has been operated as a separate autonomous enter-

prise and has and has had separate independent labor relations policies and practices. Neither the day-to-day operations nor the labor relations policies of the Herald-Examiner, the Examiner, the Chronicle or the Printing Company are controlled by Hearst.

(h) At all times material herein, respondents, other than the San Francisco-Oakland Newspaper Guild and Newspaper and Periodical Drivers' and Helpers' Union Local 921, have been engaged in a labor dispute with the Herald-Examiner, and in furtherance and support of such dispute some of such respondents have, since about December 15, 1967, picketed the plant and premises of the Herald-Examiner.

(i) At no time material herein have respondents, or any of them, had a labor dispute with the Examiner, the Chronicle, or the Printing Company, or any other Hearst newspaper other than the dispute of some of the respondents with the Herald-Examiner.

(j) On or about January 5, 1968, in furtherance and support of the aforesaid labor dispute with the Herald-Examiner, respondents, acting jointly and in concert and participation with each other, embarked upon a plan, program and campaign to create a boycott and a work stoppage at the plants and premises of the Examiner, the Chronicle and the Printing Company. Pursuant to the said plan, program and campaign, on or about January 5, 1968, respondents commenced picketing the plants and premises of the Examiner, the Chronicle and the Printing Company, and distributing handbills to employees and the public at the said plants and premises.

(k) In addition to the picketing and handbilling, as set forth in Findings of Fact 4(j), above, and also pur-

suant to the aforesaid plan, program and campaign, respondent San Francisco-Oakland Newspaper Guild orally instructed, directed and appealed to its members employed by the Printing Company to engage in work stoppages and refusals to perform services for their employer.

(l) In addition to the conduct set forth in Findings of Fact 4(j) and 4(k), above, and also pursuant to the aforesaid plan, program and campaign, respondent Newspaper and Periodical Drivers' and Helpers' Union Local 921 instructed its members employed by the Printing Company to engage in a work stoppage, failed and refused to permit them to perform services for their employer, and threatened the Printing Company with continued failure or refusal to permit its members to resume work for the Printing Company.

(m) As a consequence of respondents' acts and conduct set forth in Findings of Fact 4(j), 4(k), and 4(l), above, individuals employed by the Examiner, by the Chronicle, and by the Printing Company engaged in work stoppages and failures to perform services for their employers, and the newspaper publication and printing facilities of the Examiner, the Chronicle, and the Printing Company were completely shut down.

(n) By the acts and conduct set forth in Findings of Fact 4(j), 4(k), 4(l), and 4(m), above, respondents have engaged in, and have induced and encouraged individuals employed by the Examiner, the Chronicle, the Printing Company, and employed by other persons, to engage in, strikes or refusals in the course of their employment to use, manufacture process, transport, or otherwise handle or work on goods, articles, materials or commodities, or to perform services, and have

threatened, coerced or restrained the Examiner, the Chronicle, the Printing Company, and other persons engaged in commerce or in an industry affecting commerce.

(o) Objects of the acts and conduct of respondents, set forth in Findings of Fact 4(j), 4(k), 4(l), 4(m), and 4(n), above, have been, and are: (1) to force or require the Examiner, the Chronicle, or the Printing Company to cease doing business with their customers and suppliers; or (2) to force or require the customers and suppliers of the Examiner, of the Chronicle, or of the Printing Company to cease doing business with the said persons.

5. It may fairly be anticipated that, unless enjoined, respondents will continue to repeat the acts and conduct set forth in Findings of Fact 4(j), 4(k), 4(l), 4(m), 4(n), and 4(o), above, or similar or like acts and conduct in violation of 29 U.S.C. Sec. 158(b)(4)-(i)(ii)(B).

Conclusions of Law

1. This Court has jurisdiction of the parties and of the subject matter of these proceedings, and under 29 U.S.C. Sec. 160(1) is empowered to grant injunctive relief.

2. There is, and petitioner has, reasonable cause to believe that:

(a) Each respondent is a labor organization within the meaning of 29 U.S.C. Secs. 152(2), 158(b), and 160(1).

(b) The Herald-Examiner, the Examiner, the Chronicle, and the Printing Company each is engaged

in commerce within the meaning of 29 U.S.C. Secs. 152(6) and 152(7).

(c) The Herald-Examiner, the Examiner, the Chronicle, and the Printing Company each is engaged in commerce or in an industry affecting commerce.

(d) Respondents have engaged in unfair labor practices within the meaning of 29 U.S.C. Sec. 158(b)(4)-(i)(ii)(B), affecting commerce within the meaning of 29 U.S.C. Secs. 152(6) and 152(7), and a continuation of these practices will impair the policies of the Act as set forth in 29 U.S.C. Sec. 151(b).

3. To preserve the issues for the orderly determination as provided in the Act, it is appropriate, just and proper that, pending the final disposition of the matters herein involved pending before the Board, respondents, their officers, representatives, agents, servants, employees, attorneys, and all members, persons and labor organizations acting in concert or participation with them, or any of them, be enjoined and restrained from the commission, continuation, or repetition of the acts and conduct set forth in Findings of Fact 4(j), 4(k), 4(l), 4(m), 4(n), and 4(o), above, acts and conduct in furtherance and support thereof, or like or related acts or conduct the commission of which in the future is likely or may fairly be anticipated from respondents' acts and conduct in the past.

Done at San Francisco, California, this 7th day of February, 1968.

/s/ Alfonso J. Zirpoli
United States District Judge